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13 and BLIZZARD ENTERTAINMENT, INC.

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**UNITED STATES DISTRICT COURT**  
**NORTHERN DISTRICT OF CALIFORNIA**  
**SAN JOSE DIVISION**

ERIK ESTAVILLO,  
Plaintiff,  
v.  
ACTIVISION BLIZZARD, INC.,  
Defendant.

CASE NO. 5:19-cv-05540-NC

Assigned To: Hon. Nathanael Cousins  
Courtroom: 5

**NOTICE OF MOTION AND MOTION  
TO DISMISS COMPLAINT;  
MEMORANDUM OF POINTS AND  
AUTHORITIES IN SUPPORT  
THEREOF**

[*Request for Judicial Notice; Declaration of  
Matthew G. Ardoine; and Proposed Order  
filed concurrently herewith*]

Date: October 23, 2019  
Time: 1:00 p.m.  
Courtroom: 5  
  
Action Filed: August 2, 2019  
Trial Date: None Set

1     **TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:**

2                 **PLEASE TAKE NOTICE** that on October 23, 2019, at 1:00 p.m. or on such  
 3 other date as the Court may provide, at 280 South 1st St., San Jose, California 95113,  
 4 Courtroom 5, the Honorable Nathanael Cousins presiding, Defendant Activision  
 5 Blizzard, Inc., parent company to Blizzard Entertainment, Inc. (“Blizzard”), which is  
 6 erroneously sued herein as Activision Blizzard, Inc.,<sup>1</sup> will and hereby does move under  
 7 Federal Rule of Civil Procedure 12(b)(6) to dismiss Plaintiff Erik Estavillo’s (“Plaintiff”)  
 8 Complaint.

9                 Plaintiff alleges that Blizzard violated the Americans with Disabilities Act  
 10 (“ADA”) and Section 1723 of the California Civil Code (“Section 1723”) because  
 11 Blizzard did not adequately notify Plaintiff of the company’s video game refund policy.  
 12 This motion is made on the ground that Plaintiff fails to state a claim under the ADA  
 13 because that statute does not apply to Blizzard’s digital video game store, which is not  
 14 connected to any actual, physical place. Plaintiff’s Section 1723 claim fails as a matter of  
 15 law for the same reason. The plain language of Section 1723 does not apply to digital  
 16 stores, and even if it did, Plaintiff failed to perform the conditions precedent to make a  
 17 claim under the statute. Further, the intention of the underlying the statute – to give  
 18 consumers notice of refund policies prior to sale – is satisfied because Plaintiff was  
 19 provided notice of Blizzard’s refund policy at multiple places during the checkout and  
 20 account creation processes. Blizzard therefore respectfully requests that the Court  
 21 dismiss the Complaint with prejudice and without leave to amend. Finally, Blizzard  
 22 intends to seek attorneys’ fees under Civil Code Sections 1723(b)(2) and 1780(e) because  
 23 Plaintiff’s Complaint is meritless and is not made in good faith.

24                 This motion is based upon this Notice Of Motion And Motion To Dismiss, the  
 25 accompanying Memorandum Of Points and Authorities, Request for Judicial Notice,

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26  
 27                 <sup>1</sup> Plaintiff erroneously named Activision Blizzard, Inc., Blizzard Entertainment, Inc.’s  
 28 parent entity, as the defendant. The undersigned counsel hereby responds on behalf of  
     Activision Blizzard, Inc. and Blizzard Entertainment, Inc.

1 Declaration of Matthew G. Ardoin and accompanying exhibits filed herewith, the  
2 pleadings and other documents on file in this action, and any other evidence or argument  
3 that may be considered by the Court. A Proposed Order is also filed herewith.

4  
5 Dated: September 10, 2019

SCHILLING LAW GROUP, PC  
6 Charity M. Gilbreth  
7 Matthew G. Ardoin  
8 Tyler H. Hunt

9 By: /s/ Matthew G. Ardoin

10 Matthew G. Ardoin  
11 Attorneys for ACTIVISION  
12 BLIZZARD, INC. and BLIZZARD  
13 ENTERTAINMENT, INC.

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## **MEMORANDUM OF POINTS AND AUTHORITIES**

## I. INTRODUCTION

3 Plaintiff Erik Estavillo’s (“Plaintiff”) Complaint is a meritless and misguided ploy  
4 for attention. In his autobiography titled “The PSN Plaintiff,” Plaintiff details his long-  
5 running practice of suing video game companies on specious claims. Plaintiff admits that  
6 his lawsuits are a means for seeking attention, writing that “[e]verybody loves attention  
7 no matter what kind it is.” Request for Judicial Notice (“RJN”), Ex. 1 at p. 22. The  
8 instant lawsuit is Plaintiff’s eighth case against a video game company. RJN, Exs. 2 - 16.  
9 All of Plaintiff’s cases have been dismissed (voluntarily or by the court) within months of  
10 filing. *See id.*

11       Here, shortly after Plaintiff was allegedly “banned”<sup>2</sup> from playing the video game  
12 Overwatch for indefensibly abusive conduct towards other players specifically prohibited  
13 by Blizzard Entertainment, Inc.’s End User License Agreement, he filed the instant  
14 action. The Complaint sets forth two causes of action – violation of the Americans with  
15 Disabilities Act (“ADA”) and Section 1723 of the California Civil Code (“Section 1723”)  
16 – premised on Blizzard’s alleged failure to “post” the company’s refund policy on “the  
17 front of their digital store for video gamers.”<sup>3</sup> Neither of these statutes, however, apply to  
18 Blizzard’s online digital store. As a matter of law, Plaintiff’s claims are fatally flawed  
19 and the Complaint should be dismissed with prejudice and without leave to amend.

26       <sup>3</sup> Blizzard Entertainment, Inc. (“Blizzard”) is the developer and publisher of the video  
27       game Overwatch that is at issue in the Complaint. Plaintiff erroneously named Activision  
28       Blizzard, Inc., Blizzard Entertainment, Inc.’s parent entity, as the defendant in this  
     matter.

1           **II. FACTUAL BACKGROUND**

2           **A. Plaintiff Contends The Placement Of Blizzard's Refund Policy In Its**  

3           **Digital Store Is Insufficient**

4           On August 2, 2019, Plaintiff filed his Complaint *pro se* asserting two causes of  
p>5 action. First, Plaintiff alleges that Blizzard violated Section 1723 of the California Civil  
p>6 Code by “not explicitly stating that no returns or refunds are available *on the front of*  
p>7 *their digital store for video gamers.*” (Compl. at 4:19-22) (emphasis added). Second,  
p>8 Plaintiff alleges that Blizzard violated the ADA by not updating its digital store and End  
p>9 User License Agreement (“EULA”) to meet the “needs of Americans with Mental  
p>10 Disabilities” who need “important facts about refunds, returns, and other important  
p>11 information … explicitly explained to them.” (Compl. at 4:27-5:6). Plaintiff contends  
p>12 that Blizzard’s refund policy should be “explained to [people with mental hardships] right  
p>13 away, and not to be hidden at the bottom of an EULA they may have trouble deciphering  
p>14 in the first place.” (Compl. at 6:1-5). Accordingly, Plaintiff asks the Court to instruct  
p>15 Blizzard to revise the EULA so that “information regarding refunds, returns, and which  
p>16 legal rights they may be giving up” is “stated at the top of the EULA instead of at the  
p>17 bottom of the EULA where they are harder to find and read for such people.” (Compl. at  
p>18 6:17-22). In sum, Plaintiff takes issue with the placement of Blizzard’s refund policy in  
p>19 its digital store.

20           **B. Plaintiff’s Identical Claims Against Another Video Game Company**  

21           **Failed As A Matter of Law**

22           Earlier this year, Plaintiff’s identical lawsuit against another digital video game  
p>23 store was dismissed at the pleading stage. *See* R.J.N., Exs. 14 – 16. In *Estavillo v.*  
p>24 *Behaviour Interactive*, 2019 U.S. Dist. LEXIS 108146 (N.D. Cal. May 30, 2019),  
p>25 Plaintiff sued two other video game companies for the exact claims at issue here.  
p>26 *Estavillo*, 2019 U.S. Dist. LEXIS 108146, at \*3-4; R.J.N., Ex. 15 at p. 80. In that case he  
p>27 alleged a Section 1723 violation for failing to “state on the front page of the website for  
p>28 their digital-video-gaming store, Steam, that no returns or refunds are available for

1 banned video gamers,” and that defendants violated the ADA by “not updating their  
 2 websites and [EULA] ‘to meet the needs of Americans with Mental Disabilities,’ who  
 3 need to have ‘important facts about refunds … explicitly explained to them.’” *Id.* The  
 4 court dismissed the ADA claim because that statute does not apply to “***digital*** stores”  
 5 where the services are not “connected to any actual, physical place.” *Estavillo*, 2019 U.S.  
 6 Dist. LEXIS 108146, at \*6-8; RJN, Ex. 15 at p. 81. The Court also dismissed the Section  
 7 1723 claim because the amount in controversy was less than \$75,000, divesting the court  
 8 of diversity jurisdiction. *Estavillo*, 2019 U.S. Dist. LEXIS 108146, at \*10-11; RJN, Ex.  
 9 15 at p. 82.

10           **C. Plaintiff Alleges That He Purchased “Overwatch” Through Blizzard’s  
 11            Digital Store**

12           Blizzard is the developer and publisher of the video game Overwatch, an  
 13 interactive game played over the Internet. RJN, Ex. 17 at pp. 88-89. Players can buy  
 14 Overwatch through Blizzard’s online digital store, which sells digital copies of its games  
 15 at <https://us.shop.battle.net/en-us> (“Digital Store”). *Id.* at p. 88. The Complaint alleges  
 16 that Plaintiff purchased Overwatch from the “Blizzard/Overwatch digital storefront.”  
 17 (Comp. at 4:3-7; 4:20-22) (explaining Blizzard operates a “digital store for video  
 18 gamers”). Players access Overwatch through Blizzard’s Battle.net Application  
 19 (“Battle.net”), which is Blizzard’s gaming service that enables players to compete against  
 20 one another online and to communicate with one another using in-game text and voice  
 21 chat features. RJN, Ex. 17 at p. 89; (Compl. at 2:20-23 (alleging that Plaintiff relies on  
 22 chat functions to communicate with other players)).

23           **D. Blizzard’s Refund Policy Is Clearly Set Forth In Its Terms Of Sale And  
 24            End User License Agreement**

25           Plaintiff was presented with Blizzard’s refund policy on a least two occasions  
 26 before he was able to first play Overwatch. First, when players purchase Overwatch  
 27 through the digital store a prompt reads “By clicking ‘Pay Now,’ you agree to the Terms  
 28 of Sale and Privacy Policy,” which are accessed by clicking the words “Terms of Sale.”

1 RJN, Ex. 21. The Terms of Sale expressly state that all sales of digital content are final  
 2 and “[n]o refunds are permitted except with respect to any statutory warranties or  
 3 guaranties that cannot be excluded or limited by law.” RJN, Ex. 22 at p. 105.

4 Second, before playing Overwatch on PC, a player must create a Blizzard account.  
 5 In order to do so, the player must click through a prompt stating that by creating an  
 6 account, the player is agreeing to Blizzard’s EULA. RJN, Ex. 18. The Complaint  
 7 acknowledges that the EULA is the agreement governing the parties’ relationship. (*See,*  
 8 *e.g.*, Compl. at 4:27-5:7; 6:17-22). The EULA includes Blizzard’s refund policy:

9 YOU ACKNOWLEDGE THAT BLIZZARD IS NOT REQUIRED  
 10 TO REFUND AMOUNTS YOU PAY TO BLIZZARD FOR USE  
 11 OF THE PLATFORM, OR FOR DIGITAL PURCHASES MADE  
 12 THROUGH THE PLATFORM, FOR ANY REASON.

13 RJN, Ex. 20 at p. 98. *See also* RJN, Ex. 19 at pp. 94-95 (prior EULA setting forth similar  
 14 refund policy). The Complaint does not dispute that the refund policy is included in the  
 15 EULA. (Compl. at 6:17-22 (alleging that the refund policy should not be “at the bottom”  
 16 of the EULA)).

17 The EULA grants players a revocable license to install and access Overwatch and  
 18 Battle.net in accordance with the terms of the EULA. RJN, Ex. 20 at pp. 97-99. If a  
 19 player violates the EULA, Blizzard has the right to suspend or revoke the player’s license  
 20 to use Battle.net. *Id.* at p. 99. The EULA expressly states that Blizzard may suspend or  
 21 revoke the license if the player “engage[s] in any conduct intended to disrupt or diminish  
 22 the game experience for other players,” including “harassment” and “abusive behavior or  
 23 chat.” *Id.* at pp. 99-100. The Complaint alleges that Blizzard “bann[ed] [Plaintiff] from  
 24 their video game, Overwatch ... because of ‘abusive chat.’” (Compl. at 2:24-27).

### 25 **III. ARGUMENT**

#### 26 **A. Standard For 12(b)(6) Motion To Dismiss**

27 Federal Rule of Civil Procedure 12(b)(6) permits a party to seek dismissal of a  
 28 claim at the pleading stage if it does not state a claim upon which relief may be granted.  
 Fed. R. Civ. P. 12(b)(6). “Dismissal can be based on the lack of a cognizable legal theory

1 or the absence of sufficient facts alleged under a cognizable legal theory.” *Balistreri v.*  
 2 *Pacifica Police Dep’t*, 901 F.2d 696, 699 (9th Cir. 1990). A plaintiff must allege  
 3 sufficient facts “to state a claim to relief that is plausible on its face.” *Bell Atl. Corp. v.*  
 4 *Twombly*, 550 U.S. 544, 570 (2007). When considering whether a complaint states a  
 5 claim on which relief may be granted, the court accepts allegations in the complaint as  
 6 true and construes the allegations in the light most favorable to the plaintiff. *Hishon v.*  
 7 *King & Spaulding*, 467 U.S. 69, 73 (1984).

8       In ruling on a motion to dismiss brought pursuant to Rule 12(b)(6), a court is  
 9 permitted to consider material which is properly submitted as part of the complaint,  
 10 documents that are not physically attached to the complaint if their authenticity is not  
 11 contested and the plaintiff’s complaint necessarily relies on them, and matters of public  
 12 record. *Lee v. City of Los Angeles*, 250 F.3d 668, 668-89 (9th Cir. 2001).

13       **B. Plaintiff’s ADA Claim Fails Because Blizzard’s Digital Store Has No**  
 14       **Connection To A Physical Place**

15       Plaintiff fails to state a cause of action under the ADA because the Ninth Circuit  
 16 has held that the ADA does not apply to websites “not connected to any actual physical  
 17 place.” *Earll v. eBay, Inc.*, 599 F. App’x 695, 696 (9th Cir. 2015) (holding that eBay is  
 18 not subject to the ADA). Title III of the ADA provides that “[n]o individual shall be  
 19 discriminated against on the basis of disability in the full and equal enjoyment of the  
 20 goods, services, facilities, privileges, advantages, or accommodations *of any place of*  
 21 *public accommodation.*” 42 U.S.C. §12182(a) (emphasis added). The Ninth Circuit has  
 22 interpreted the term “place of public accommodation” to require “some connection  
 23 between the good or service complained of and an actual physical place.” *Weyer v.*  
 24 *Twentieth Century Fox Film Corp.*, 198 F.3d 1104, 1114 (9th Cir. 2000); *Earll*, 599 F.  
 25 App’x at 696. The Complaint does not allege that Blizzard operates a physical store, nor  
 26 can it. Instead, the Complaint takes issue with Blizzard’s “digital store for video  
 27 gamers.” (Compl. at 4:19-22). Plaintiff’s ADA claim fails as a matter of law because  
 28 Blizzard’s Digital Store has no connection to an actual, physical place.

1           Earlier this year this District Court dismissed Plaintiff's ADA claim against  
 2 another video game company with similar allegations because the digital video game  
 3 store lacked a connection to a physical place. *Estavillo*, 2019 U.S. Dist. LEXIS 108146,  
 4 at \*7-8; *Estavillo v. Behaviour Interactive*, 2019 U.S. Dist. LEXIS 108144, at \*2-3 (June  
 5 27, 2019) (adopting report and recommendation for dismissal as the court's order); RJN  
 6 Exs. 15 and 16. The Court explained:

7           According to Plaintiff's allegations, Steam is a 'digital store.'  
 8 As a result, the Amended Complaint lacks allegations that  
 show Steam has a connection to an actual, physical place.  
 9 Without that connection, Plaintiff's 'ADA claim fails as a  
 matter of law.'

10          *Estavillo*, 2019 U.S. Dist. LEXIS 108146, at \*7-8; RJN, Ex. 15 at p. 80. Similarly,  
 11 Plaintiff's ADA claim should be dismissed.

12          **C. Plaintiff's Section 1723 Claim Fails As A Matter Of Law**

13          The crux of the issue in dispute for Plaintiff's Section 1723 claim is the placement  
 14 of Blizzard's refund policy in the Digital Store. (Compl. at 4:19-22; 4:27-5:6; 6:1-5;  
 15 6:17-22). Yet Plaintiff cannot set forth a cognizable claim under Section 1723 because  
 16 the plain language of the statute simply does not apply to digital stores. Even assuming  
 17 *arguendo* that the statute applies to digital stores, Plaintiff did not perform the conditions  
 18 precedent to make a claim under Section 1723. And even if he had, Blizzard provides its  
 19 refund policy at multiple locations in the Digital Store.<sup>4</sup>

20          1. The Plain Language Of Section 1723 Does Not Apply To Digital  
 21                         Stores

22          Plaintiff alleges that Blizzard violated Section 1723 "by not explicitly stating that  
 23 no returns or refunds are available on the *front of their digital store* for video gamers."

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25          <sup>4</sup> Plaintiff not only fails to state a claim against Blizzard, his entire lawsuit is brought in  
 26 bad faith. Plaintiff claims without any statutory basis that Blizzard violated Section 1723  
 27 for failing to put the refund policy "on the front of their digital store" – the statute has no  
 such requirement. Plaintiff also admits that he had notice of the refund policy in  
 28 Blizzard's EULA. Finally, Plaintiff's allegation that he was "banned" is false – he was  
 suspended and may play Overwatch at this very moment if he wished.

1 (Compl. at 4:19-22) (emphasis added). The statute, however, has no such requirement.

2 The plain language of Section 1723 does not apply to digital stores:

3 Every retail seller which sells goods to the public in this state that has a  
 4 policy as to any of those goods of not giving full cash or credit refunds, or  
 5 of not allowing equal exchanges..., for at least seven days following  
 6 purchase of the goods if they are returned and proof of their purchase is  
 7 presented, shall conspicuously display that policy either on signs posted ***at each cash register and sales counter, at each public entrance, on tags attached to each item sold under that policy, or on the retail seller's order forms,*** if any."

8 Cal. Civ. Code §1723(a) (emphasis added). Digital stores are not mentioned in the  
 9 statute. Nothing in Section 1723 requires that a refund policy be placed on the "front of  
 10 [a] digital store" – as demanded by Plaintiff – nor anywhere else on a website. Instead,  
 11 Section 1723 contemplates a physical location with a cash register, sales counter, and  
 12 public entrance. The obligations imposed by Section 1723 are inapplicable in a digital  
 13 store environment where there is no cash register, no sales counter, no public entrance, no  
 14 tags attached to items, and no order forms. Further, no California court has expanded  
 15 Section 1723 to apply to digital stores or websites. Since the statutory language is clear,  
 16 the Court must follow the plain meaning of the statute and cannot rewrite the statute  
 17 beyond its express terms.<sup>5</sup> *See Berry v. American Express Publishing, Inc.*, 147 Cal.  
 18 App. 4th 224, 232-33 ("Although the CLRA has been interpreted broadly, courts have not  
 19 expanded it beyond its express terms."); *See Prof'l Eng'rs in Cal. Gov. v. Brown*,  
 20 229 Cal. App. 4th 861, 873 (2014) (if statutory language is clear, the court must follow its  
 21 plain meaning). Since nothing in Section 1723 indicates where refund policies must be  
 22 placed in digital stores, Plaintiff's Section 1723 claim fails as a matter of law.  
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25       <sup>5</sup> Further, the legislature could not have intended Section 1723 to apply to digital stores  
 26 because such stores did not even exist when the statute was enacted in 1990. *Burden v.*  
 27 *Snowden*, 2 Cal. 4th 556, 562 (1992) (objective of statutory interpretation is to ascertain  
 28 and effectuate legislative intent); Cal. Civ. Code §1723, added by Stats. 1990, ch. 422  
 (A.B.3047), §2.

1           2.     Plaintiff Did Not Perform The Conditions Precedent To Make A  
 2                   Section 1723 Claim

3           Assuming *arguendo* that Section 1723 applies to digital stores, Plaintiff's  
 4           Complaint does not allege that he performed the conditions precedent to make a claim  
 5           under the statute (nor could he). Section 1723 requires that a buyer "returns, or attempts  
 6           to return, the purchased goods on or before the 30th day after their purchase." Cal. Civ.  
 7           Code §1723(c)(1). Here, Plaintiff did not attempt to "return" goods.<sup>6</sup> Rather, Plaintiff  
 8           alleges he was "banned" from playing Overwatch for his conduct (as noted above, in fact  
 9           he only received a temporary suspension, which has since expired). (Compl. at 2:24-27).  
 10          Further, this did not occur within thirty days of purchase. The Complaint admits Plaintiff  
 11          purchased Overwatch years ago. (Compl. at 3:7-10). Since Plaintiff failed to perform the  
 12          conditions precedent required by Section 1723, his claim must be dismissed.

13           3.     Blizzard's Refund Policy Was Provided At Multiple Locations  
 14                   During The Checkout And Account Creation Processes

15          Finally, even if Section 1723 applies to Plaintiff's situation, the intention of the  
 16          underlying the statute – to give consumers notice of refund policies prior to sale – is  
 17          satisfied because Blizzard provides its refund policy at multiple places in the Digital  
 18          Store. Specifically, the EULA states in all capitalized letters that Blizzard "IS NOT  
 19          REQUIRED TO REFUND AMOUNTS YOU PAY ... FOR ANY REASON." RJN,  
 20          Ex. 20 at p. 98. *See also* RJN, Ex. 19. The Complaint concedes that the EULA includes  
 21          the refund policy. (Compl. at 6:17-22). In addition, the Terms of Sale expressly state  
 22          that Plaintiff is not entitled to a refund for the purchase of digital content such as

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 24         <sup>6</sup> Moreover, Plaintiff did not purchase a "good." California law defines "goods" as  
 25         "tangible" and "movable" personal property. *See, e.g., Gonzalez & Co. v. Department of*  
*Alcoholic Bev. Control*, 151 Cal. App. 3d 172, 175-76 (1984); *Italiani v. MGM Corp.*,  
 26         45 Cal. App. 2d 464, 467 (1941); Cal. Civ. Code §1761. Plaintiff purchased a license to  
 27         use Blizzard's video game and Battle.net. *See* RJN, Ex. 20 at pp. 97-98. Because a  
 28         "good" must be a tangible item, courts have held that licenses to use intellectual property  
 28         do not constitute "goods." *See, e.g., Tele Atlas N.V. v. NAVTEQ Corp.*, 397 F. Supp. 2d  
 28         1184, 1192-93 (N.D. Cal. 2005) (holding that a patent license is not a tangible good).

1 Overwatch. RJN, Ex. 22 at p. 105. Overwatch players are provided the Terms of Sale  
 2 and the EULA prior to completing their purchases and when creating an account to play  
 3 the game on PCs. RJN, Exs. 18, 21. Plaintiff's Section 1723 claim is therefore meritless  
 4 and should be dismissed.

5 **IV. CONCLUSION**

6 For the reasons set forth above, Blizzard respectfully requests that the Court  
 7 dismiss Plaintiff's Complaint with prejudice and without leave to amend. Plaintiff's  
 8 lawsuit lacks merit and was filed to re-gain attention. As Plaintiff writes, whenever he  
 9 "need[s] to feel a smile on my face, I have just learned to go back and read some of the  
 10 articles and what people have to say about me" in connection with his prior lawsuits.  
 11 RJN, Ex. 1 at p. 22. Plaintiff laments that "[t]hese days, no one ever calls me or comes  
 12 knocking at my door, although I sometimes wish they would." *Id.* at p. 23. Plaintiff's  
 13 desire for attention is a wholly inappropriate reason to file a lawsuit. This case should be  
 14 dismissed before the Court or Blizzard are required to waste any further time or  
 15 resources. Further, the Court should award Blizzard the attorneys' fees and costs  
 16 incurred to respond to Plaintiff's baseless Complaint. The Section 1723 violation that  
 17 Plaintiff alleges is subject to the Consumers Legal Remedies Act, which allows a  
 18 prevailing defendant to recover attorneys' fees where plaintiff acts in bad faith, as  
 19 Plaintiff has here. *See* Cal. Civil Code §§1723(b)(2); 1780(e).

20 Dated: September 10, 2019

SCHILLING LAW GROUP, PC

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 Charity M. Gilbreth  
 Matthew G. Ardoin  
 Tyler H. Hunt

By: /s/ Matthew G. Ardoin  
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 28  
 Matthew G. Ardoin  
 Attorneys for ACTIVISION  
 BLIZZARD, INC. and BLIZZARD  
 ENTERTAINMENT, INC.

## **PROOF OF SERVICE**

I am employed in the County of Orange, State of California. I am over the age of 18 years and not a party to this action. My business address is SCHILLING LAW GROUP, PC 1100 Newport Center Drive, Suite 250, Newport Beach, CA 92660. My email address is *shamika.polin@schillinglawgroup.com*.

**On September 10, 2019, I served the following document(s) described as:**

**NOTICE OF MOTION AND MOTION TO DISMISS COMPLAINT;  
MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF**

**BY OVERNIGHT MAIL DELIVERY**

I am familiar with the office practice of Schilling Law Group, PC for collecting and processing documents for overnight mail delivery by Express Mail or other express service carrier. Under that practice, such documents are delivered for overnight mail delivery by Express Mail or other express service carrier on that same day in the ordinary course of business, with delivery fees thereon fully prepaid and/or provided for. I mailed a sealed envelope or package containing the above-described document(s) and addressed as set forth below in accordance with the office practice of Schilling Law Group, PC for collecting and processing documents for overnight mail delivery by Express Mail or other express service carrier:

Erik Estavillo  
3284 Cortese Circle  
San Jose, CA 95127  
Tel: (408) 593-1226

I declare under penalty of perjury under the laws of the United States of America  
that the foregoing is true and correct. 

Dated: September 10, 2019

Shamika L. Polin

4822-4144-5792, v. 10